

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7875 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI SHITALBHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MS HARSHA DEVANI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 12th June 2000 passed by the Police Commissioner, Vadodara City detaining the petitioner under the provisions of the Gujarat Prevention

of Anti Social Activities Act, 1985. The petitioner is detained at Special Jail, Porbandar since 12th June 2000.

No reply to the petition has been filed and the grounds attached with the detention order show that three criminal cases under the Bombay Prohibition Act were registered against the petitioner, at Prohibition Station on 4th May 1998, 13th July 1999 and 8th May 2000. Out of these three cases in first two cases, the trial is said to be pending and the third case was under investigation when the detention order was passed. On the basis of these three cases and the petitioner's other criminal and anti social activities, the detaining authority has found the petitioner to be a bootlegger. The detaining authority has referred to the incidents dated 21st April 2000, 6th May 2000 and 26th March 2000 about which the witnesses have deposed against the petitioner's anti social activities. The statements of these witnesses were recorded on 21st May, 2000, 22nd May 2000 and 23rd May 2000. The same were verified on 7th June 2000 by the detaining authority and the detention order was passed on 12th June 2000. On the basis of the criminal and anti social activities of the petitioner in the context of the three criminal cases as aforesaid and as have been deposed by the witnesses with regard to the incidents dated 21st May, 2000, 6th May 2000 and 26th March 2000, it cannot be said that there is a case of breach of public order. All these activities which have been referred to against the petitioner in the grounds of detention, may, at the most, constitute a case of breach of law and order, but not that of breach of public order. In para 8 of the detention order, the detaining authority has mentioned that the petitioner's activities of dealing in the country liquor are injurious to the public health. In absence of any cogent and credible material to form such an opinion, even with reference to Kanuji S. Zala v. State of Gujarat and ors., reported in 1999 (2) GLH 415, it cannot be said that a case of breach of public order is made out simply because a bald mention has been made that his activities are injurious to the public health.

For the reasons as aforesaid, the impugned detention order dated 12th June 2000 passed against the petitioner by the Police Commissioner, Vadodara City, cannot be sustained in the eye of law. The same is hereby quashed and set aside. It is directed that the petitioner Bhikhabhai Shitalbhai Kahar, detained at Special Jail, Porbandar shall be released forthwith if not required in any other case. This Special Civil Application is allowed. Rule is made absolute.

(M.R. Calla, J.)

Sreeram.